

House Bill 572

By: Representatives Lindsey of the 54th, Willard of the 49th, Smith of the 129th, Chambers of the 81st, Ralston of the 7th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Title 24 of the Official Code of Georgia Annotated, relating to evidence, so as to change provisions relating to qualifications of expert witnesses and consideration of their testimony; to provide for related matters; to provide an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by striking Code Section 24-9-67, relating to expert opinion evidence, and inserting in its place new Code Sections 24-9-67 and 24-9-67.1 to read as follows:

"24-9-67.

~~The~~ In criminal cases, the opinions of experts on any question of science, skill, trade, or like questions shall always be admissible; and such opinions may be given on the facts as proved by other witnesses.

24-9-67.1

(a) The provisions of this Code section shall apply in all civil actions. The opinion of a witness qualified as an expert under this Code section may be given on the facts as proved by other witnesses. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing or trial. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

1 (b) If scientific, technical, or other specialized knowledge will assist the trier of fact in any
2 cause of action to understand the evidence or to determine a fact in issue, a witness
3 qualified as an expert by knowledge, skill, experience, training, or education may testify
4 thereto in the form of an opinion or otherwise, if:

5 (1) The testimony is based upon sufficient facts or data which are or will be admitted into
6 evidence at the hearing or trial;

7 (2) The testimony is the product of reliable principles and methods; and

8 (3) The witness has applied the principles and methods reliably to the facts of the case.

9 (c) Notwithstanding the provisions of subsection (b) of this Code section and any other
10 provision of law which might be construed to the contrary, in professional malpractice
11 actions, the opinions of an expert, who is otherwise qualified as to the acceptable standard
12 of conduct of the professional whose conduct is at issue, shall be admissible only if, at the
13 time the act or omission is alleged to have occurred, such expert:

14 (1) Was licensed by an appropriate regulatory agency to practice his or her profession
15 in the state in which such expert was practicing or teaching in the profession at such time;
16 and

17 (2) In the case of a medical malpractice action, had actual professional knowledge and
18 experience in the area of practice or specialty in which the opinion is to be given as the
19 result of having been regularly engaged in:

20 (A) The active practice of such area of specialty of his or her profession for at least 75
21 percent of his or her professional time during the last five years, with sufficient
22 frequency to establish an appropriate level of knowledge, as determined by the judge,
23 in performing the procedure, diagnosing the condition, or rendering the treatment which
24 is alleged to have been performed or rendered negligently by the defendant whose
25 conduct is at issue; or

26 (B) The teaching of his or her profession for at least 75 percent of his or her
27 professional time during the last five years as an employed member of the faculty of an
28 educational institution accredited in the teaching of such profession, with sufficient
29 frequency to establish an appropriate level of knowledge, as determined by the judge,
30 in teaching others how to perform the procedure, diagnose the condition, or render the
31 treatment which is alleged to have been performed or rendered negligently by the
32 defendant whose conduct is at issue; and

33 (C) Except as provided in subparagraph (D) of this paragraph:

34 (i) Is a member of the same profession;

35 (ii) Is a medical doctor testifying as to the standard of care of a defendant who is a
36 doctor of osteopathy; or

1 (iii) Is a doctor of osteopathy testifying as to the standard of care of a defendant who
2 is a medical doctor; and

3 (D) Notwithstanding any other provision of this Code section, an expert who is a
4 physician and, as a result of having, during at least three of the last five years
5 immediately preceding the time the act or omission is alleged to have occurred,
6 supervised, taught, or instructed nurses, nurse practitioners, certified registered nurse
7 anesthetists, nurse midwives, physician's assistants, physical therapists, occupational
8 therapists, or medical support staff, has knowledge of the standard of care of that health
9 care provider under the circumstances at issue shall be competent to testify as to the
10 standard of that health care provider. However, a nurse, nurse practitioner, certified
11 registered nurse anesthetist, nurse midwife, physician's assistant, physical therapist,
12 occupational therapist, or medical support staff shall not be competent to testify as to
13 the standard of care of a physician.

14 (d) Upon motion of a party, the court may hold a pretrial hearing to determine whether the
15 witness qualifies as an expert and whether the expert's testimony satisfies the requirements
16 of subsections (a) and (b) of this Code section. Such hearing and ruling shall be completed
17 no later than the final pretrial conference contemplated under Code Section 9-11-16.

18 (e) An affiant must meet the requirements of this Code section in order to be deemed
19 qualified to testify as an expert by means of the affidavit required under Code Section
20 9-11-9.1.

21 (f) It is the intent of the legislature that, in all civil cases, the courts of the State of Georgia
22 not be viewed as open to expert evidence that would not be admissible in other states.
23 Therefore, in interpreting and applying this Code section, the courts of this state may draw
24 from the opinions of the United States Supreme Court in Daubert v. Merrell Dow
25 Pharmaceuticals, Inc., 509 U.S. 579 (1993); General Electric Co. v. Joiner, 522 U.S. 136
26 (1997); Kumho Tire Co. Ltd. v. Carmichael, 526 U.S. 137 (1999); and other cases in
27 federal courts applying the standards announced by the United States Supreme Court in
28 these cases."

29 **SECTION 2.**

30 This Act shall become effective July 1, 2005, and shall apply with respect to actions pending
31 on that date as well as actions filed on or after that date.

32 **SECTION 3.**

33 All laws and parts of laws in conflict with this Act are repealed.